



General Services Administration  
Office of General Counsel  
Washington, DC 20405

April 11, 1996

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Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

Subject: Implementation of Section 302 of the Telecommunications  
Act of 1996, Open Video Systems, CS Docket No. 96-46

Dear Mr. Caton:

Enclosed please find the original and eleven copies of the General Services Administration's Reply Comments for filing in the above-referenced proceeding. Copies of this filing have been served on all interested parties.

Sincerely,

*Michael J. Ettner*

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Enclosures

cc: International Transcription Service  
Larry Walke (Diskette)

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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In the Matter of )  
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Implementation of Section 302 of the )  
Telecommunications Act of 1996 )  
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Open Video Systems )  
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CS Docket No. 96-46

**REPLY COMMENTS OF THE  
GENERAL SERVICES ADMINISTRATION**

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April 11, 1996

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CS Docket No. 96-46

**REPLY COMMENTS OF THE  
GENERAL SERVICES ADMINISTRATION**

The General Services Administration ("GSA"), on behalf of the Federal Executive Agencies, submits these Reply Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), FCC 96-99, released March 11, 1996. In this NPRM, the Commission requested comments and replies on the implementation of open video systems ("OVS").

**I. Introduction**

In Comments filed on April 1, 1996, GSA urged the Commission to modify its Part 64 rules to provide an effective accounting safeguard against the cross-subsidization of OVS by telephone ratepayers.<sup>1</sup> GSA recommended that the Commission require local exchange carriers ("LECs") to classify all video dialtone ("VDT") and OVS costs as

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<sup>1</sup> Comments of GSA, pp. 3-4.

unregulated immediately.<sup>2</sup>

Comments were also filed by a broad range of interested parties, including:

- The United States Telephone Association ("USTA"), the National Telephone Cooperative Association ("NTCA") and nine individual LECs;
- The National Cable Television Association ("NCTA") and twenty-two other cable parties;
- The National Association of Broadcasters ("NAB") and seven other broadcaster parties;
- The National Association of Regulatory Utility Commissioners ("NARUC") and four state commissions;
- Nine cities and city representatives;
- Eight consumer advocates;
- Six providers of video programming; and
- Two interexchange carriers ("IXCs").

In these Reply Comments, GSA responds to the positions and proposals of these parties.

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<sup>2</sup> Id., pp. 4-5.

## **II. The Commission Should Not Require Telephone Ratepayers To Subsidize the Provision of Video Services By LECs.**

In its Comments, GSA expressed its concern that, as a large user of telecommunications services, it might be forced to subsidize LEC provision of OVS.<sup>3</sup> GSA urged the Commission to modify its Part 64 rules to prevent such cross-subsidization.<sup>4</sup>

There was broad support for GSA's position in the Comments of other parties.<sup>5</sup> MCI, in its capacity as a large customer of LEC services, urges the Commission to "fully address the dangers to telecommunications customers of cross-subsidizing open video systems."<sup>6</sup> NARUC states:

Both these statements implicitly recognize the 1996 Act's intent that ratepayers of basic telephone services not subsidize LEC competitive offerings. Such cross-subsidies not only could result in telephone ratepayers paying higher rates, or not receiving deserved rate reductions, but also would give LECs an unfair competitive advantage over competing providers of multichannel video distribution services.<sup>7</sup>

At least one of the LECs, U S West, Inc. ("U S West"), acknowledges that cost allocation is necessary "to ensure that an OVS operator's regulated telephone business is not

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<sup>3</sup> Id., p. 3.

<sup>4</sup> Id., p. 4.

<sup>5</sup> See, e.g., Comments of The Alliance for Community Media, Alliance for Communications Democracy, Consumer Federation of America, Consumer Project on Technology, Center for Media Education, and People for the American Way ("the Coalition"), pp. 2-7; The Motion Picture Association of America, Inc. ("MPAA"), p. 8; Rainbow Programming Holdings, Inc., pp. 25-27.

<sup>6</sup> Comments of MCI, pp. 1 and 8.

<sup>7</sup> Comments of NARUC, p. 6.

bearing a disproportionate share of the cost of commonly used network infrastructure.”<sup>8</sup>

Virtually all commenting cable operators also emphasize the importance of preventing cross-subsidization.<sup>9</sup> Time Warner Cable (“Time Warner”) explains that LEC cross-subsidization could not only reduce competition in the video business, but also in the telephone business. Time Warner states:

There is a significant risk that LECs will enter the video business not because they believe such entry will be profitable but in an attempt to limit the resources cable operators will have available to invest in entry into the telephone business. Thus, subsidized LEC video service rates may not only be a means of unfairly capturing customers in the MVPD marketplace, but also (and perhaps primarily) as a means of preserving the LEC’s local telephone monopoly.<sup>10</sup>

There is agreement among all commenting parties that the Commission’s Part 64 rules, properly modified, will provide an effective safeguard against cross-subsidization.<sup>11</sup>

The California Commission states:

The proper allocation of costs between regulated and unregulated services under Part 64 of the Commission’s rules assures that ratepayers of regulated services are not subsidizing unregulated competitive services. This is necessary to ensure a level playing field for the competitive market - in this instance the open video systems

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<sup>8</sup> Comments of U S West, p. 8.

<sup>9</sup> See, e.g., Comments of NCTA, pp. 20-23; Joint Comments of Cablevision Systems Corporation and The California Cable Television Association (“Joint Commenters”), pp. 25-31; American Cable Entertainment, et al. (“Commenters”), pp. 20-22.

<sup>10</sup> Comments of Time Warner, pp. 9-10.

<sup>11</sup> See, e.g., Comments of NYNEX Corporation (“NYNEX”), p. 23; Continental Cablevision, Inc. (“Cablevision”), p. 11; the Pennsylvania Public Utility Commission (“PaPUC”), p. 8.

market.<sup>12</sup>

Most commenting parties also emphasize that the LECs must modify their procedures to comply with the Commission's Part 64 rules, as modified in an upcoming proceeding, before they apply for certification as an OVS provider.<sup>13</sup> TCI states:

Even with a bright-line test for allocating costs, there would be insufficient time during the ten-day certification period to ensure compliance with cost allocation rules. Fortunately, the statute does not require the Commission to do so....Establishment of cost allocation rules and a carrier's demonstration of compliance are matters applicable to the regulated carrier and not to OVS, and they can and must occur outside the OVS certification process if they are to be effective.<sup>14</sup>

GSA agrees with TCI's assessment, and urges the Commission to require the LECs to comply with its modified Part 64 rules prior to their making application for OVS certification.

### **III. The Commission Should Require LECs to Classify All VDT And OVS Costs As Unregulated.**

In its Comments, GSA pointed out that the substantial investments the LECs have already made under the Commission's VDT rules are now in a state of regulatory limbo.<sup>15</sup>

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<sup>12</sup> Comments of the People of the State of California and the Public Utilities Commission of the State of California ("California Commission"), p. 12.

<sup>13</sup> See, e.g., Comments of Cox Communications, Inc. ("Cox"), p. 7; Comcast Cable Communications, Inc., Adelphia Communications Corporation and InterMedia Partners, L.P. ("Comcast, et al."), p.8; Time Warner, p. 15.

<sup>14</sup> Comments of Tele-Communications, Inc. ("TCI"), p. 7.

<sup>15</sup> Comments of GSA, pp. 4-5.

GSA urged the Commission to issue either a Declaratory Ruling or a Responsible Accounting Officer Letter to ensure that both VDT and OVS costs are immediately classified as unregulated by the LECs pursuant to the Commission's Part 64 rules.<sup>16</sup>

Other commenting parties agreed that the status of costs associated with VDT must be addressed by the Commission.<sup>17</sup> Whether individual LECs ultimately decide to convert their VDT systems to OVS or cable service is immaterial as far as the application of Part 64 rules is concerned. VDT investments are not used or useful in the provision of telephone service and must now be classified as unregulated. Until the Commission formally addresses this problem, many LECs will undoubtedly continue to consider their VDT costs as regulated, distorting both interstate and intrastate ratemaking. The Commission should act immediately to rectify this situation.

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<sup>16</sup> Id., p. 5.

<sup>17</sup> See, e.g., Comments of Cox, p. 8; Comcast, et al., p. 8; Time Warner, pp. 28-30.



#### **IV. Conclusion**

As the agency vested with the responsibility for acquiring telecommunications services on a competitive basis for use of the Federal Executive Agencies, GSA urges the Commission immediately to require LECs to classify all VDT and OVS costs as unregulated for purposes of Part 64 of its rules.

Respectfully submitted,  
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April 11, 1996

## **CERTIFICATE OF SERVICE**

I MICHAEL J. EITNER, do hereby certify that copies of the foregoing "Reply Comments of the General Services Administration" were served this 11th day of April, 1996, by hand delivery or postage paid to the following parties:

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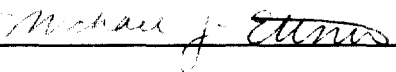
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